

APPEAL NO. 020498
FILED APRIL 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 4, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter.

The claimant appealed, contending that her doctor has her off work as evidenced by a Work Status Report (TWCC-73); that she had cooperated with the Texas Rehabilitation Commission (TRC); and that she had looked "for work some weeks." The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant's efforts constituted a good faith effort to obtain employment commensurate with her ability to work. Section 408.142(a)(4). Rule 130.102(d) and (e) set out the ways that an employee can demonstrate a good faith effort to obtain employment commensurate with the ability to work.

The pertinent provisions of Rule 130.102(d) and (e) are:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * *

- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period;

* * * *

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or

- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.
- (e) Job Search Efforts and Evaluation of Good Faith Effort. [A]n injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Although the claimant testified, and it is relatively undisputed, that she had some contact with the TRC around the time of the qualifying period about going to school in January 2001 (the stipulated qualifying period was from August 8 through November 8, 2000), there was no evidence that the claimant was enrolled in, much less satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC. The claimant clearly had not met the provisions of Rule 130.102(d)(2).

The claimant argues that she had been off work since February 1997 and her doctor had filed a TWCC-73 to that effect. Rule 130.102(d)(4) requires a narrative which specifically explains how the compensable injury causes a total inability to work in any capacity, not merely a return to the preinjury job. The hearing officer found that the medical evidence “did not explain the reasons why Claimant was unable to perform even sedentary work during the qualifying period.” That finding is sufficient to meet the hearing officer’s determination on this point.

The claimant testified, and in her appeal asserted, that she “did look for work some weeks”; however, that is insufficient to meet the requirements of Rule 130.102(e) to look for employment “every week of the qualifying period and document . . . her efforts.”

Finally, the claimant asserts error that she was not allowed to testify to some matters because she had failed to answer the carrier’s interrogatories. Our review of the record indicates that the claimant was allowed to testify and there was no evidence, testimonial or otherwise, which would have likely resulted in a different decision. See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Accordingly, the hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **ACE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge